

Article 56A.

Pharmacy Benefits Management.

§ 58-56A-1. Definitions.

The following definitions apply in this Article:

- (1) Health benefit plan. – As defined in G.S. 58-50-110(11). This definition specifically excludes the State Health Plan for Teachers and State Employees.
- (1a) Insured. – An individual covered by a health benefit plan.
- (2) Insurer. – Any entity that provides or offers a health benefit plan.
- (3) Maximum allowable cost price. – The maximum per unit reimbursement for multiple source prescription drugs, medical products, or devices.
- (3a) Pharmacist. – A person licensed to practice pharmacy under Article 4A of Chapter 90 of the General Statutes.
- (4) Pharmacy. – A pharmacy registered with the North Carolina Board of Pharmacy.
- (5) Pharmacy benefits manager. – An entity who contracts with a pharmacy on behalf of an insurer or third-party administrator to administer or manage prescription drug benefits.
- (6) Third-party administrator. – As defined in G.S. 58-56-2. (2014-120, s. 20(a); 2017-116, s. 1.)

§ 58-56A-3. Consumer protections.

(a) A pharmacy or pharmacist shall have the right to provide an insured information regarding the amount of the insured's cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for discussing any information described in this section or for selling a lower-priced drug to the insured if one is available.

(b) A pharmacy benefits manager shall not, through contract, prohibit a pharmacy from offering and providing direct and limited delivery services to an insured as an ancillary service of the pharmacy, as delineated in the contract between the pharmacy benefits manager and the pharmacy.

(c) A pharmacy benefits manager shall not charge, or attempt to collect from, an insured a co-payment that exceeds the total submitted charges by the network pharmacy.

(d) Any contract for the provision of a network to deliver health care services between a pharmacy benefits manager and insurer shall be made available for review by the Department.

(e) The Department shall report to the Attorney General any violations of this section or G.S. 58-56A-4 in accordance with G.S. 58-2-40(5). (2017-116, s. 2.)

§ 58-56A-4. Pharmacy and pharmacist protections.

A pharmacy benefits manager may only charge a fee or otherwise hold a pharmacy responsible for a fee relating to the adjudication of a claim if the fee is reported on the remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits manager and the pharmacy. This section shall not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D. (2017-116, s. 2.)

§ 58-56A-5. Maximum allowable cost price.

(a) In order to place a prescription drug on the maximum allowable cost price list, the drug must be available for purchase by pharmacies in North Carolina from national or regional wholesalers, must not be obsolete, and must meet one of the following conditions:

- (1) The drug is listed as "A" or "B" rated in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.
- (2) The drug has a "NR" or "NA" rating, or a similar rating, by a nationally recognized reference.

(b) A pharmacy benefits manager shall adjust or remove the maximum allowable cost price for a prescription drug to remain consistent with changes in the national marketplace for prescription drugs. A review of the maximum allowable cost prices for removal or modification shall be completed by the pharmacy benefits manager at least once every seven business days, and any removal or modification shall occur within seven business days of the review. A pharmacy benefits manager shall provide a means by which the contracted pharmacies may promptly review current prices in an electronic, print, or telephonic format within one business day of the removal or modification. (2014-120, s. 20(a).)

§ 58-56A-10. Civil Penalties for violations; administrative procedure.

(a) Whenever the Commissioner has reason to believe that a pharmacy benefits manager has violated any of the provisions of this Article with such frequency as to indicate a general business practice, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(b) If, under subsection (a) of this section, the Commissioner finds a violation of this Article, the Commissioner may order the payment of a monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsections (d) and (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) per day for each prescription drug resulting from the pharmacy benefit manager's failure to comply with G.S. 58-56A-5. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the Commissioner the court may order the pharmacy benefits manager who committed a violation specified in subsection (b) of this section to make restitution in an amount that would make whole any pharmacist harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.

(e) Upon petition of the Commissioner the court may order the pharmacy benefits manager who committed a violation specified in subsection (b) of this section to make restitution to the Department for expenses under subsection (f) of this section, incurred in the investigation, hearing, and any appeals associated with the violation in such amount that would reimburse the agency for

the expenses. The petition may be made at any time and also in any appeal of the Commissioner's order.

(f) The Commissioner may contract with consultants and other professionals with relevant expertise as necessary and appropriate to conduct investigation, hearing, and appeals activities as provided in this section. Such contracts shall not be subject to G.S. 114-2.3, G.S. 147-17, or Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review.

(g) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any pharmacy benefits manager as to any civil penalty or restitution.

(h) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75. (2015-273, s. 2; 2016-78, s. 6.3.)